



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2017-0255; FRL-9963-08-Region 9]**

#### **Air Plan Approval; Arizona; Stationary Sources; New Source Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing approval of regulatory revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the applicable state implementation plan (SIP) for the State of Arizona. These revisions are primarily intended to make corrections to ADEQ's SIP-approved rules for the issuance of New Source Review (NSR) permits for stationary sources, with a focus on preconstruction permit requirements under the Clean Air Act (CAA or Act) for major sources and major modifications. On November 2, 2015, we took final action on a SIP submittal from ADEQ that significantly updated ADEQ's SIP-approved NSR permitting program. However, that action identified several deficiencies in ADEQ's program that needed to be corrected. This proposed action will correct a substantial portion of the deficiencies we identified in that 2015 action. We are seeking comment on our proposed action and plan to follow with a final action.

**DATES:** Any comments must arrive by **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit comments, identified by Docket ID No. EPA-R09-OAR-2017-0255, at <http://www.regulations.gov>, or via email to [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted,

comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Lisa Beckham, EPA Region 9, (415) 972-3811, *beckham.lisa@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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## Definitions

For this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.
- (iii) The initials *A.R.S.* mean or refer to the Arizona Revised Statutes.
- (iv) The initials *BACT* mean or refer to Best Available Control Technology.
- (v) The initials *CFR* mean or refer to Code of Federal Regulations.
- (vi) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (vii) The initials *FIP* mean or refer to Federal Implementation Plan.

- (viii) The initials *GHG* mean or refer to greenhouse gas.
- (ix) The initials *IBR* mean or refer to incorporation by reference.
- (x) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.
- (xi) The initials *NA-NSR* mean or refer to Nonattainment New Source Review.
- (xii) The initials *NSR* mean or refer to New Source Review.
- (xiii) The initials *PAL* mean or refer to Plantwide Applicability Limits.
- (xiv) The initials *PM<sub>10</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).
- (xv) The initials *PM<sub>2.5</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).
- (xvi) The initials *PSD* mean or refer to Prevention of Significant Deterioration.
- (xvii) The initials *SIP* mean or refer to State Implementation Plan.
- (xviii) The initials *SMC* mean or refer to significant monitoring concentration.
- (xix) The words *State* or *Arizona* mean the State of Arizona, unless the context indicates otherwise.
- (xx) The initials *TSD* mean or refer to the technical support document for this action.
- (xxi) The initials *VOC* mean or refer to volatile organic compound.

## **I. The State's Submittals**

### **A. Which rules did the State submit?**

On April 28, 2017, ADEQ submitted regulatory revisions for the ADEQ portion of the Arizona SIP to the EPA. This SIP revision submittal, which is the subject of this action and is referred to herein as the “April 2017 NSR submittal,” contains revisions to ADEQ’s preconstruction review and permitting program requirements. These revisions are intended to

correct deficiencies in ADEQ’s SIP-approved NSR program related to the requirements under both part C (prevention of significant deterioration or PSD) and part D (nonattainment new source review or NA-NSR) of title I of the Act, which apply to major stationary sources and major modifications of such sources. The preconstruction review and permitting programs are often collectively referred to as “New Source Review” or NSR.

Table 1 lists the rules in the April 2017 NSR submittal, all of which we are proposing for SIP approval in this action, along with the rules’ effective dates under State law. The submitted rules are from the Arizona Administrative Code, Title 18 – Environmental Quality, Chapter 2 – Department of Environmental Quality – Air Pollution Control, Articles 1 through 4.

Table 1 – Submitted Rules Proposed for Approval in this Action

Rule	Title	State Effective Date
R18-2-101 (except 20)	Definitions	March 21, 2017
R18-2-201	Particulate Matter: PM <sub>10</sub> and PM <sub>2.5</sub>	March 21, 2017
R18-2-203	Ozone	March 21, 2017
R18-2-217	Designation and Classification of Attainment Areas	March 21, 2017
R18-2-218	Limitation of Pollutants in Classified Attainment Areas	March 21, 2017
R18-2-330	Public Participation	March 21, 2017
R18-2-332	Stack Height Limitation	March 21, 2017
R18-2-401	Definitions	March 21, 2017
R18-2-402	General	March 21, 2017
R18-2-403	Permits for Sources Located in Nonattainment Areas	March 21, 2017
R18-2-404	Offset Standards	March 21, 2017
R18-2-405	Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe	March 21, 2017
R18-2-406	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas	March 21, 2017
R18-2-407	Air Quality Impact Analysis and Monitoring Requirements	March 21, 2017
R18-2-408	Innovative Control Technology	March 21, 2017
R18-2-410	Visibility and Air Quality Related Value Protection	March 21, 2017

R18-2-411	Permit Requirements for Sources that Locate in Attainment or Unclassifiable Areas and Cause or Contribute to a Violation of Any National Ambient Air Quality Standard	March 21, 2017
R18-2-412	PALs	March 21, 2017

On May 9, 2017, ADEQ's April 2017 NSR submittal was determined to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The proposed revisions will apply to all areas and sources of Arizona where ADEQ has jurisdiction. Currently, ADEQ has permitting jurisdiction for the following stationary source categories in all areas of Arizona: smelting of metal ores, coal-fired electric generating stations, petroleum refineries, Portland cement plants, and portable sources. ADEQ also has permitting jurisdiction for major and minor sources in the following counties: Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Mohave, Navajo, Santa Cruz, Yavapai, and Yuma. Finally, ADEQ has permitting jurisdiction over major sources in Pinal County<sup>1</sup> and the Rosemont Copper Mine in Pima County.

B. Are there previous versions of the rules in the Arizona SIP?

Table 2 lists the existing rules in the Arizona SIP that would be superseded or removed from the Arizona SIP as part of our proposed action. If the EPA were to take final action as proposed herein, these rules generally would be replaced in the SIP by the submitted set of rules listed in Table 1.

Table 2 – SIP Rules Proposed for Removal from Arizona SIP in this Action

Rule	Title	EPA Approval Date	Federal Register Citation
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<sup>1</sup> ADEQ has delegated implementation of the major source program to the Pinal County Air Quality Control District.

R9-3-301(I) and (K)	Installation Permits: General	05/05/1982	47 FR 19326
R9-3-304(H)	Installation Permits in Attainment Areas	05/03/1983	48 FR 19878
R18-2-101	Definitions	11/23/2014 11/2/2015	79 FR 56655 80 FR 67319
R18-2-201	Particulate Matter: PM <sub>10</sub> and PM <sub>2.5</sub>	09/23/2014	79 FR 56655
R18-2-203	Ozone: One-hour Standard and Eight-hour Averaged Standard	09/23/2014	79 FR 56655
R18-2-217	Designation and Classification of Attainment Areas	11/2/2015	80 FR 67319
R18-2-218	Limitation of Pollutants in Classified Attainment Areas	11/2/2015	80 FR 67319
R18-2-330	Public Participation	11/2/2015	80 FR 67319
R18-2-332	Stack Height Limitation	11/2/2015	80 FR 67319
R18-2-401	Definitions	11/2/2015	80 FR 67319
R18-2-402	General	11/2/2015	80 FR 67319
R18-2-403	Permits for Sources Located in Nonattainment Areas	11/2/2015	80 FR 67319
R18-2-404	Offset Standards	11/2/2015	80 FR 67319
R18-2-405	Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe	11/2/2015	80 FR 67319
R18-2-406	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas	11/2/2015	80 FR 67319
R18-2-407	Air Quality Impact Analysis and Monitoring Requirements	11/2/2015	80 FR 67319
R18-2-412	PALs	11/2/2015	80 FR 67319

C. What is the purpose of the EPA's proposed rule?

The purpose of this proposed rule is to propose to update the Arizona SIP by approving the rule revisions submitted in ADEQ's 2017 NSR submittal, to discuss the basis for our proposed approval action, and to provide notice of and seek public comment on our proposed action. We present our evaluation of the rules submitted by ADEQ in its April 2017 NSR submittal, which are identified in Table 1 above, as compared with applicable requirements under the CAA and EPA regulations, particularly with respect to the PSD and NA-NSR

requirements applicable to major sources and major modifications. We provide our reasoning in general terms below, and include our more detailed analysis in the Technical Support Document for this action (TSD), which is available in the docket for this proposed rulemaking. This proposed rule also discusses our proposal to approve ADEQ's request that we remove older, outdated rules from the Arizona SIP and our rationale for doing so.

## **II. The EPA's Evaluation**

### **A. How is the EPA evaluating the State's rules?**

The EPA has reviewed the provisions submitted for SIP approval by ADEQ that are the subject of this action for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, subpart I, and the CAA requirements for SIP revisions in CAA section 110(l) and 193.

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, a public comment period of at least 30 days, and an opportunity for a public hearing. Based on our review of the public process documentation included in the April 2017 NSR submittal, we find that ADEQ has provided sufficient evidence of public notice and opportunity for comment and public hearing prior to adoption and submittal of these rules to the EPA.

With respect to substantive requirements, we have reviewed the ADEQ provisions that are the subject of our current action in accordance with the CAA and applicable regulatory requirements, focusing primarily on those that apply to PSD permit programs under part C of



title I of the Act and Nonattainment NSR permit programs under part D of title I of the Act. The submitted rules are intended to correct a substantial portion of the deficiencies in ADEQ's NSR program that we identified in our November 2, 2015 final action and a separate June 22, 2016 final action issued by the EPA, discussed below.

On November 2, 2015 (80 FR 67319), the EPA published a final limited approval and limited disapproval of revisions to the ADEQ portion of the Arizona SIP (referred to hereinafter as "our 2015 NSR action").<sup>2</sup> Our 2015 NSR action updated ADEQ's SIP-approved NSR permitting program, but identified deficiencies that need to be corrected for the EPA to grant full approval of ADEQ's NSR program. Thus, our 2015 NSR action would trigger an obligation on the EPA to promulgate a Federal Implementation Plan (FIP) to address the deficiencies that were the basis for our limited disapproval action unless the State of Arizona corrects the deficiencies, and the EPA approves the related plan revisions, within two years of that final action. In addition, to avoid sanctions under section 179 of the Act, ADEQ has 18 months from December 2, 2015, the effective date of our 2015 NSR action, to correct those deficiencies related to part D of title I of the Act.

On June 22, 2016 (81 FR 40525), the EPA also published a separate but related final limited disapproval action for ADEQ's NA-NSR program, as ADEQ's program did not fully address fine particulate matter (PM<sub>2.5</sub>) precursors as required by section 189(e) of the Act (referred to hereinafter as "our 2016 PM<sub>2.5</sub> precursor action"). This action triggered an obligation on the EPA to promulgate a FIP to address this deficiency unless the State of Arizona corrects the deficiency, and the EPA approves the related plan revisions, within two years of the final

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<sup>2</sup> We also finalized other actions, which included a partial disapproval related to the fine particulate matter (PM<sub>2.5</sub>) significant monitoring concentration, and limited approvals, without corresponding limited disapprovals, related to section 189(e) of the Act

action. In addition, to avoid sanctions under section 179 of the Act, ADEQ has 18 months from the July 22, 2016 effective date of our 2016 PM<sub>2.5</sub> precursor action to correct the deficiency as it relates to part D of title I of the Act.

B. Do the rules meet the evaluation criteria?

Please see our 2015 NSR action, including our proposed action on March 18, 2015 (80 FR 14044), for a detailed discussion of the approval criteria for the NSR program and how ADEQ's NSR rules reviewed in that action generally meet the approval criteria despite certain deficiencies that require correction for the EPA to fully approve ADEQ's NSR program. In this action, we are focusing our review on the revisions that ADEQ made to correct the deficiencies we identified in our 2015 NSR action and our 2016 PM<sub>2.5</sub> precursor action. We also reviewed other revisions ADEQ made in the rules submitted in ADEQ's April 2017 NSR action to ensure that the revised language was consistent with applicable requirements of the Act and EPA regulations.

We are proposing approval of ADEQ's 2017 NSR submittal because it would correct numerous deficiencies and is otherwise consistent with the requirements for NSR programs and the Act. If approved, this action would not correct *all* the deficiencies in ADEQ's NSR program previously identified by the EPA, but it would correct those deficiencies that would potentially lead to sanctions under section 179 of the Act because of our 2015 NSR action. ADEQ expects to correct the remaining deficiencies in a subsequent SIP submittal. Our detailed analysis of ADEQ's 2017 NSR submittal is provided in the TSD for this action. Here we briefly discuss the previously identified deficiencies that this action, if finalized, would correct.

1. Deficiencies corrected related to public availability of information

In our 2015 NSR action, we found that ADEQ's NSR program did not ensure, for all sources subject to NSR review, that certain requirements related to public availability of information were met. Specifically, ADEQ's program did not ensure that the information submitted by the owner or operator and ADEQ's analysis of effects of air quality would be available for public inspection in at least one location in the affected area. See 40 CFR 51.161(b)(1). To address this deficiency, ADEQ revised its public notice requirements to ensure that the necessary documents will be available for public inspection in the "area affected" by the action, including the Director's analysis of the effects on ambient air quality. See revised R18-2-330(D) and (F).

## 2. Deficiencies corrected related to stack height provisions

Regarding requirements for stack heights and good engineering practice, in our 2015 NSR action, we found that ADEQ's NSR program did not adequately address the following requirements. First, we found that ADEQ's NSR program did not meet the public hearing requirements in 40 CFR 51.164 and 51.118(a) because the referenced procedures were not in the SIP or submitted for SIP approval. ADEQ addressed this issue by revising R18-2-332 to reference the SIP-approved public notice requirements in R18-2-330. See revised R18-2-332(E). We found that ADEQ's rules did not contain language that met the exception to the stack height provisions provided in 40 CFR 51.118(b). In addition, R18-2-332 incorrectly referenced July 1, 1975 instead of July 1, 1957. ADEQ's current SIP submittal has corrected these deficiencies; see revised R18-2-332(B)(1) and (B)(2). We also determined that ADEQ's NSR program did not contain a requirement that owners or operators seeking to rely on the equation in 40 CFR 51.100(ii)(2)(i) produce evidence that the equation was relied on in establishing an emission limitation. ADEQ's currently submitted rules have added this requirement; see revised R18-2-

332(C)(2)(a). Finally, ADEQ's NSR program previously contained a provision at R18-2-332(D) which provided additional provisions for sources "seeking credit because of plume impaction which results in concentrations in violation of national ambient air quality standards or applicable maximum allowable increases." This provision is not contained in the federal regulations and appeared to allow for the use of stack heights beyond good engineering practice (GEP) stack height, as defined in 40 CFR 51.100(ii), which we identified as a deficiency in our 2015 NSR action. ADEQ has now addressed this deficiency by removing this provision from R18-2-332.

### 3. Deficiencies corrected related to the CAA NA-NSR program

In our 2015 NSR action, we found that ADEQ's NSR program often referred to Articles 9 and/or 11 of ADEQ's regulations where the federal regulations refer to 40 CFR part 60, 61, or 63; or, similarly, sections 111 or 112 of the Act (see 40 CFR 51.165(a)(1)(xiii) – lowest achievable emission rate, and (a)(1)(xl) – best available control technology)<sup>3</sup>. Articles 9 and 11 are where ADEQ incorporates by reference the federal regulations in 40 CFR parts 60, 61, and 63 (which the EPA implements under sections 111 and 112 of the Act). However, these Articles were not in the SIP, had not been submitted for SIP approval, and did not necessarily contain provisions equivalent to *all* the subparts in parts 60, 61, and 63. In its current submittal, ADEQ has revised its rules to remove the references to Article 9 and 11 and instead reference the requirements in 40 CFR part 60, 61, or 63; sections 111 and 112; and/or the new source performance standard or national emission standards for hazardous air pollutants. See the revised R18-2-101(21), R18-2-401(11) and R18-2-406(A)(4).

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<sup>3</sup> Our 2015 NSR action also identified the definition for "regulated NSR pollutant" in 40 CFR 51.165(a)(1)(xxxvii) as being part of this deficiency. However, upon further review, that determination was in error as the federal definition does not reference part 60, 61, 63 or sections 111 and 112 of the Act.

We also determined in our 2015 NSR action that ADEQ's SIP-approved NSR rules governing nonattainment NSR contained several definitions that were not at least as stringent as the corresponding federal definition. In its April 2017 NSR submittal, ADEQ has revised its definitions for consistency with the federal definitions in 40 CFR 51.165(a)(1). Specifically, ADEQ corrected the definitions for *stationary source* in revised R18-2-101(140), *major stationary source* in revised R18-2-401(13), *net emissions increase* in revised R18-2-101(88), *significant* in revised R18-2-101(131) and R18-2-405(B), *allowable emissions* in revised R18-2-101(13), *federally enforceable* in revised R18-2-101(53), *regulated NSR pollutant* in revised R18-2-101(122), and *projected actual emissions* in revised R18-2-401(23).

40 CFR 51.165(a)(3)(ii)(G) requires that credit for emission reductions can be claimed only to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51, subpart I, or the state has not relied on it in demonstration of attainment or reasonable further progress. In our 2015 NSR action, we found that ADEQ's NSR program generally addresses this requirement at R18-2-404(H), but also needed to include references to minor NSR requirements, which are to be approved as part of ADEQ's NSR regulations under subpart I. In its April 2017 NSR submittal, ADEQ added a reference to its minor NSR rule R18-2-334, but not its registration program in R18-2-302.01. We determined that this is acceptable as sources in the registration program cannot use emission reductions to obtain a registration. That is, as ADEQ explained in its April 2017 NSR submittal, R18-2-302.01 does not provide for the imposition of minor NSR emission limits; rather, those limits would only be imposed on a source that was denied registration and required to obtain a permit meeting the minor NSR requirements (which are in R18-2-334). See revised R18-2-404(H).

We determined in our 2015 NSR action that ADEQ's NSR program contained an apparent typographical error in R18-2-402 by including an incorrect cross reference that did not meet the requirements of 40 CFR 51.165(a)(6) that ensures owners and operators document and maintain a record of certain applicability-related information. In its current submittal, ADEQ has corrected this error; see revised R18-2-402(F)(1)(c). Additionally, we previously found that ADEQ's NSR program did not require owners or operators to make information required under 40 CFR 51.165(a)(6) available for review upon request by the Director or the public, as required by 40 CFR 51.165(a)(7). ADEQ's current submittal has added this requirement; see revised R18-2-402(F)(7).

40 CFR 51.165(a)(9)(i) requires that increases in emissions be offset by reductions in emissions using a ratio of emission decreases to emission increases of at least 1 to 1. ADEQ's rules contained this requirement in R18-2-404, but we found in our 2015 NSR action that it could have been interpreted as establishing the ratio as increases to decreases, instead of decreases to increases. In addition, R18-2-404(A) referred to additional offset requirements in R18-2-405, but did not refer to the offset requirement in other parts of R18-2-404. ADEQ has corrected these deficiencies in its current SIP submittal; see revised R18-2-402(A).

40 CFR 51.165(a)(11) requires emission offsets to be obtained for the same regulated NSR pollutant, unless interprecursor offsetting is permitted for a particular pollutant, as further specified in the rule. We found in our 2015 NSR action that ADEQ's rules did not contain a specific requirement that offsets must be for the same regulated pollutant. In its April 2017 NSR submittal, ADEQ has clarified its rules consistent with 40 CFR 51.165(a)(11). See revised R18-2-404(A). In addition, ADEQ added an option to R18-2-404(A) to use interprecursor trading for ozone that is consistent with new revisions to 40 CFR 51.165(a)(11)(i).

40 CFR 51.165(b) requires that SIPs have a preconstruction program that satisfies the requirements of section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification that would locate in an attainment area, but would cause or contribute to a violation of a national ambient air quality standard (NAAQS) in any adjacent area. ADEQ's rules contained provisions for 40 CFR 51.165(b) in R18-2-406 that generally met this requirement. However, we found in our 2015 NSR action that ADEQ's regulations referred to the State's primary or secondary ambient air quality standards, and thus did not fully meet the requirements in 40 CFR 51.165(b)(1) and (2) as ADEQ's program did not ensure such standards would apply to areas outside of Arizona. In this current SIP submittal, ADEQ has addressed this issue by revising its program to instead refer to the NAAQS, which are applicable in all areas. These program requirements were removed from R18-2-406 and included in the new R18-2-411 – Permit Requirements for Sources that Locate in Attainment or Unclassifiable Areas and Cause or Contribute to a Violation of any National Ambient Air Quality Standard. See revised R18-2-101(85), R18-2-401(27), and newly adopted R18-2-411.

In our 2015 NSR action, we found certain deficiencies in ADEQ's rules regarding requirements for Plantwide Applicability Limits (or Actuals PALs), which have been corrected in ADEQ's 2017 NSR submittal. First, ADEQ's provisions for PALs did not specify that modifications under a PAL do not need approval through the nonattainment major NSR program as required by 40 CFR 51.165(f)(1)(iii)(B), as only the PSD program was mentioned. ADEQ's current submittal has added language to include this provision, see revised R18-2-412(A)(2)(b). ADEQ's NA-NSR program did not contain a definition for *major emissions unit* as is required by 40 CFR 51.165(f)(2)(iv). ADEQ has now added this term at R18-2-401(12). 40 CFR 51.165(f)(9) – ADEQ's PAL provisions at R18-2-412(H) contained an incorrect reference, and

R18-2-412(H)(5) used “eliminated” where the federal regulation uses “established.” ADEQ has now corrected these deficiencies; see revised R18-2-412(H)(4) and (H)(5). ADEQ’s program also contained incorrect cross-references in meeting the requirements of 40 CFR 51.165(f)(10), as follows: PAL renewal provisions at R18-2-412(I)(1) needed to contain a reference to subsection (D) of R18-2-412 instead of (F), and R18-2-(I)(4)(a) needed to reference subsection (E) of R18-2-412. ADEQ’s current SIP submittal shows that it has made these corrections; see revised R18-2-412(I)(1) and (I)(4)(a).

Finally, section 173(a)(4) of the Act requires that NA-NSR permit programs shall provide that permits to construct and operate may be issued if “the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified.” We found in our 2015 NSR action that ADEQ’s program did not contain this provision. ADEQ’s current SIP submittal has added this requirement. See revised R18-2-403(A)(4).

#### 4. Deficiencies corrected related to the CAA PSD program

In our 2015 NSR action, we found that ADEQ’s NSR rules often referred to Articles 9 and/or 11 of ADEQ’s regulations where the federal regulations refer to 40 CFR parts 60, 61, or 63; or, similarly, sections 111 or 112 of the Act (see 40 CFR 51.166(b)(1)(iii)(aa), (b)(12), (b)(16)(i), (b)(17), (b)(47)(ii)(c), (b)(49)(ii), (i)(1)(ii)(aa), and (j)). Articles 9 and 11 are where ADEQ incorporates by reference the federal regulations in 40 CFR parts 60, 61, and 63 (which EPA implements under sections 111 and 112 of the Act). However, these Articles were not in the SIP, had not been submitted for SIP approval, and do not necessarily contain provisions equivalent to *all* the subparts in parts 60, 61, and 63. In its current SIP submittal, ADEQ has revised its rules to remove the references to Article 9 and 11 and instead reference the



requirements in 40 CFR part 60, 61, or 63; and/or sections 111 and 112. See revised R18-2-101(53)(a), (124)(b); R18-2-401(11); R18-2-101(21); R18-2-402(G)(2); and R18-2-406(A)(4).

ADEQ adopted the PSD increments, or maximum allowable increases, in R18-2-218 – *Limitation of Pollutants in Classified Attainment Areas*. However, we determined in our 2015 NSR action that in other rules ADEQ used “increment” or “incremental ambient standard” where it appeared the intent is to refer to the standards established in R18-2-218 and identified in ADEQ’s rules as the “maximum allowable increases.” ADEQ’s April 2017 NSR submittal addresses this issue by generally revising these references to “maximum allowable increases.” See revised R18-2-406(E), R18-2-412(G)(2)(b), R18-2-101(51).<sup>4</sup>

In our 2015 NSR action, we found that ADEQ’s program did not ensure that sources subject to the PSD program would be reviewed for compliance with the 2012 PM<sub>2.5</sub> NAAQS of 12.0 µg/m<sup>3</sup>, which was effective March 18, 2013 (see 78 FR 3086). See 40 CFR 51.166(b)(2)(iii)(i)(2), (b)(35), (d), (g)(3)(ii), (k), and (m)(1). This new NAAQS is required to be implemented for PSD sources (unless otherwise grandfathered under provisions at 40 CFR 51.166(i)(10)) beginning with the effective date of the NAAQS. In its April 2017 NSR submittal, ADEQ revised its program to more broadly reference the NAAQS, ensuring that this requirement is met. See the revised R18-2-218(F)(5)(b)(ii), R18-2-401(27), R18-2-406(A)(5) and R18-2-407(B).

In our 2015 NSR action, we noted that ADEQ’s PSD program, at R18-2-406(A), contained a reference to rule R18-2-408, but R18-2-408 was not in the SIP and had not been

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<sup>4</sup> ADEQ also needs to correct this issue in R18-2-319(A)(3) and R18-2-320(B)(6) per our 2015 NSR action. While ADEQ has recently revised these rules to address this issue, they were not included in the April 2017 NSR submittal.

submitted for SIP approval. ADEQ included R18-2-408 in the April 2017 NSR submittal, and we are proposing to approve it into the SIP.

In our 2015 NSR action, we determined that ADEQ's definitions applicable to the PSD program did not fully meet 40 CFR 51.166(b)(1), which requires each state plan to contain specific definitions for the PSD program. We have reviewed the revised definitions included in the current SIP submittal as compared with the federal PSD definitions in 40 CFR 51.166(b) and have found that ADEQ's submittal contains the definitions necessary to implement a PSD program. ADEQ made revisions that corrected the following definitions from 40 CFR 51.166(b): *Major stationary source* – see revised R18-2-101(75) and R18-2-401(13), *net emissions increase* – see revised R18-2-101(88), *stationary source* – see revised R18-2-101(140), *major source baseline date* – see revised R18-2-218(B)(2)(b), *baseline area* – see revised R18-2-218(D), *allowable emissions* – see revised R18-2-101(13)(b), *federally enforceable* – see revised R18-2-101(53), *complete* – see revised R18-2-401(4), *significant* – see revised R18-2-101(131), *projected actual emissions* – see revised R18-2-401(23), and *regulated NSR pollutant* – see revised R18-2-101(124).

Regarding restrictions on area classifications (as Class I, II or III), we found in our 2015 NSR action that ADEQ's rules did not completely meet the requirements of 40 CFR 51.166(e) and section 162(a) of the Act, which require certain areas in existence on August 7, 1977 to be designated as Class I areas. ADEQ's rules impermissibly limited the consideration of boundary changes to such Class I areas to those made prior to March 12, 1993. ADEQ has now corrected this deficiency; see revised R18-2-217(B). ADEQ's rules also did not contain a provision consistent with the federal regulatory requirement for Class I area redesignations prior to August 7, 1977 at 40 CFR 51.166(e)(2). ADEQ has now corrected this deficiency, see revised R18-2-

217(C). In addition, ADEQ's rules did not include a provision that is fully consistent with the requirements related to designating areas as Class II areas in 40 CFR 51.166(e)(3). ADEQ corrected this deficiency, see the revised R18-2-217(D).

Regarding requirements for exclusions from increment consumption, we determined in our 2015 NSR action that ADEQ's rules contained provisions that allowed for certain temporary emissions to be excluded from increment consumption that did not conform with the requirements in 40 CFR 51.166(f)(1)(v) and (f)(4). ADEQ needed to remove the Director's discretion to extend the time allowed for temporary emissions, and to broaden the reference to the State ambient air quality standards to apply to any air quality control region. In its current SIP submittal, ADEQ has corrected these deficiencies; see revised R18-2-218(F)(5).

Regarding requirements for redesignating areas as Class I, II or II, in our 2015 NSR action, we found that ADEQ's program incorrectly applied the provisions in 40 CFR 51.166(g)(1) only to attainment and unclassifiable areas. However, this portion of the PSD program applies to all areas of the State, including nonattainment areas. This deficiency has been corrected in the current SIP submittal; see revised R18-2-217(A). ADEQ's rules also previously contained provisions for allowing the State to redesignate certain areas under 40 CFR 51.166(g), but they did not adequately meet the public participation requirements in 40 CFR 51.166(g)(2)(i). ADEQ has now corrected this deficiency; see revised R18-2-217(F)(1). In addition, ADEQ's provisions for classifying areas to Class III did not clearly identify which areas may be designated as Class III as specified in 40 CFR 51.166(g)(3). ADEQ has now corrected this deficiency; see revised R18-2-217(G). Concerning 40 CFR 51.166(g)(3)(ii), ADEQ's rules improperly allowed for redesignation to be approved by the Governor's designee. This was inconsistent with 40 CFR 51.166(g)(3)(ii), which specifically requires the Governor's

approval. ADEQ has now corrected this deficiency; see revised R18-2-217(F) and (G). In meeting the requirements of 40 CFR 51.166(g)(3)(iii), ADEQ rules R18-2-217 also contained a reference to “maximum allowable concentration” which incorrectly referenced R18-2-218, and referenced only the State’s ambient air quality standards, which do not generally apply in areas outside of Arizona. In the current SIP submittal, ADEQ has corrected this deficiency; see revised R18-2-217(G)(4). Also, ADEQ’s rules did not meet all the public notice requirements for redesignations under 40 CFR 51.166(g)(3)(iv). ADEQ’s current submittal has corrected this deficiency; see revised R18-2-217(G).

At the time of our 2015 NSR action, ADEQ’s rules provided an exemption for certain portable stationary sources with a prior permit that contains requirements equivalent to the PSD requirements in 40 CFR 51.166 (j) through (r). While this requirement was generally consistent with 40 CFR 51.166(i)(1)(iii), we found that ADEQ’s rules impermissibly expanded this exemption to portable sources that have been issued nonattainment NSR permits and PAL permits. ADEQ has corrected this deficiency. See revised R18-2-406(E).

In our 2015 NSR action, we determined that ADEQ’s rules did not clearly meet the requirements of 40 CFR 51.166(k)(1) because the relevant rule provision contained an “or” that could be interpreted as allowing a source to demonstrate it will not contribute to an increase above the significance levels in an adjacent nonattainment area *in lieu of* the demonstration required for the NAAQS and increments. In addition, R18-2-406(A)(5)(a) requires that a person applying for a PSD permit demonstrate that the project would not cause a violation of any maximum allowable increase over the baseline concentration in “any attainment or unclassifiable area,” but ADEQ’s definition for “attainment area” in the SIP limited attainment areas to those

“in the state.” ADEQ has corrected these deficiencies in its current SIP submittal. See revised R18-2-406(A)(5) and R18-2-101(19).

We determined in our 2015 NSR action that ADEQ’s rules did not specifically address the requirements of 40 CFR 51.166(n)(1) and (3), which require that (1) the owner or operator of a proposed source or modification submit all information necessary to perform any analysis or make any determination required under procedures established in accordance with 40 CFR 51.166, and (2) upon request of the state, the owner or operator also provide specified information concerning air quality impacts and growth. ADEQ has corrected these deficiencies in its current SIP submittal; see revised R18-2-406(L).

Regarding requirements for sources impacting Class I areas, in our 2015 NSR action, we found that ADEQ’s rules did not fully address the requirements in 40 CFR 51.166(p)(1) that relate to notifications to EPA, although existing SIP requirements in R9-3-304(H) partially addressed the requirements. ADEQ now has corrected this issue by submitting R18-2-410 for SIP approval, which contain these requirements at R18-2-410(C)(1). In addition, we found in our 2015 NSR action that while ADEQ’s rules generally included the requirements of 40 CFR 51.166(p)(3) at R18-2-406, ADEQ’s rule contained the phrase “no significant adverse impacts,” which is inconsistent with the federal regulation, which requires a demonstration of “no adverse impacts.” ADEQ has now corrected this deficiency; see revised R18-2-410(D). ADEQ’s program also contained outdated maximum allowable increases for Class I areas that were not consistent with 40 CFR 51.166(p)(4). ADEQ has corrected this deficiency in the current SIP submittal; see revised R18-2-410(F).

In our 2015 NSR action, we found that certain PSD public participation requirements were not adequately addressed; these issues have been corrected in ADEQ’s April 2017 NSR

submittal. First, ADEQ's rules did not ensure that materials available during the public comment period are available in each region in which the proposed source would be constructed as required by 40 CFR 51.166(q)(2)(ii). ADEQ has now corrected this deficiency. See R18-2-330(D). ADEQ's rules also did not require ADEQ to notify the public of (1) the degree of increment consumption that is expected from the source or modification, or (2) the Director's preliminary determination, as required by 40 CFR 51.166(q)(2)(iii). ADEQ has corrected this deficiency. See revised R18-2-402(I). ADEQ's NSR program also did not require ADEQ to make public comments and the written notification of its final determination available in the same location as the preliminary documents as required by 40 CFR 51.166(q)(2)(vi) and (viii). ADEQ has also corrected this deficiency; see revised R18-2-402(I).

Regarding information required to be provided by the source, in our 2015 NSR action, we found that ADEQ's rules contained a typographical error, which did not ensure owners and operators would document and maintain records of certain applicability-related information as required by 40 CFR 51.166(r)(6). ADEQ corrected this deficiency; see revised R18-2-402(F)(6)(b). In addition, we found that ADEQ's submittal did not require owners or operators to make information required under 40 CFR 51.166(r)(6) available for review upon request by the Director or the public as required by 40 CFR 51.166(r)(7). ADEQ has corrected this deficiency in its current SIP submittal; see revised R18-2-402(F)(7).

In our 2015 NSR action, we identified a number of deficiencies in ADEQ's rules specifying the requirements for plantwide applicability limits (PALs), which have been corrected in its April 2015 NSR submittal. The issues are similar to the issues discussed above for PALs provisions for the NA-NSR program. First, ADEQ's program did not include a definition for major emissions unit as required by 40 CFR 51.166(w)(2)(iv). ADEQ has added the definition at

R18-2-401(12). ADEQ's PAL provisions at R18-2-412(H) contained an incorrect reference, and R18-2-412(H)(5) used "eliminated" where the federal regulation uses "established", which prevented ADEQ's rules from meeting 40 CFR 51.166(w)(9). ADEQ has corrected these deficiencies; see revised R18-2-412(H)(4) and (5). ADEQ's PAL renewal provisions also contained incorrect references related to the requirements in 40 CFR 51.166(w)(10). ADEQ has now corrected those references; see revised R18-2-412(I)(1) and (4).

5. Other revisions and changes to the EPA's NSR program and/or ADEQ's NSR program

Our review of ADEQ's April 2017 NSR submittal also considered whether ADEQ's submittal was consistent with other changes made to federal NSR program requirements following our 2015 action. These changes include: the removal of vacated elements from the PSD program related to GHGs (August 19, 2015 at 80 FR 50199); revisions to the public noticing provisions for permitting (October 18, 2016 at 81 FR 71613); SIP requirements for PM<sub>2.5</sub> nonattainment areas (August 24, 2016 at 81 FR 58010); and the 2015 ozone standard (October 26, 2015 at 80 FR 65292). As discussed in further detail in our TSD, we have determined that ADEQ's program, as updated by the current SIP submittal, meets the required elements of these regulatory revisions except for one disapproval issue that is already the subject of a limited disapproval in our 2016 PM<sub>2.5</sub> precursor action. ADEQ intends to correct this deficiency in a separate SIP submittal. That is, no new disapproval issues have been identified that are associated with these changes to the federal NSR requirements.

Additionally, in our 2015 NSR action we finalized a partial disapproval of ADEQ's program related to the significant monitoring concentration (SMC) for PM<sub>2.5</sub> at 40 CFR 51.166(i)(5)(i)(c). Our disapproval action did not require ADEQ to revise its program, as our

action prevented this portion of ADEQ's program from becoming approved into the SIP.

However, in its current SIP submittal, ADEQ has updated its program to be consistent with the PM<sub>2.5</sub> SMC, and our current action includes our proposed approval of that change.

C. Review of rules requested to be removed from the SIP

In Table 2 of this preamble, we identified the ADEQ rules we are proposing to remove from the SIP as part of this action. Except for R9-2-301(I) and (K) and R9-3-304(H), the ADEQ rules we are proposing to replace are older versions of the ADEQ rules in the April 2017 NSR submittal. The older versions proposed for removal from the SIP contain deficiencies that ADEQ needed to correct. R9-3-301(I) and (K) and R9-3-304(H) are significantly older rules that were approved into the SIP in 1982 and 1983 that have since been repealed by ADEQ under State law, and the corresponding updated provisions are included in the April 2017 NSR submittal.

D. Remaining NSR Deficiencies

As discussed previously, this action does not address all the outstanding limited disapproval issues related to ADEQ's NSR program from our 2015 NSR action and our 2016 PM<sub>2.5</sub> precursor action. Our TSD provides a summary of the remaining limited disapproval issues. Our 2015 NSR action triggered a CAA obligation for EPA to promulgate a FIP unless Arizona submits, and we approve, plan revisions that correct the deficiencies within two years of the effective date of our final action. In addition, for deficiencies pertaining to requirements under part D of title I of the CAA our action also triggers sanctions unless ADEQ submits and we approve SIP revisions that correct the deficiencies before 18 months from our final action. The EPA has preliminarily determined that ADEQ's April 2017 NSR submittal addresses the deficiencies under part D of title I of the CAA identified as limited disapproval issues in our 2015 NSR action. ADEQ intends to make an additional submittal in order to meet the FIP



deadline of December 2, 2017 related to our 2015 action and the sanctions deadline of January 22, 2018 for our 2016 PM<sub>2.5</sub> precursor action.

E. Federal Implementation Plan for GHGs and ADEQ's PSD Program

ADEQ is currently subject to a FIP under the PSD program for GHGs because ADEQ has not adopted a PSD program for the regulation of GHGs. See 40 CFR 52.37. ADEQ's April 2017 NSR submittal is not intended to correct this program deficiency, as regulation of GHG emissions is currently prohibited under State law. See A.R.S. section 49-191. In our final action, we intend to move the codification of the FIP for GHGs for areas under the jurisdiction of ADEQ and certain other areas in Arizona from 40 CFR 52.37 to 40 CFR 52.144, where the State of Arizona's PSD program approval is listed. Previously, there were several other states subject to the FIP for GHGs, and EPA applied the FIP to all such states, collectively, at 40 CFR 52.37. See 75 FR 82246 on Dec. 30, 2010. However, the State of Arizona is the only area that remains subject to this GHG-specific FIP. Therefore, it is appropriate to move the FIP provision to the regulatory section where Arizona's PSD program is identified.

In addition, if we finalize our action, we also intend to update 40 CFR 51.144 to clarify that ADEQ has an approved PSD program, except for GHGs, under sections 160 through 165 of the Act.

F. The EPA's recommendations to further improve the State's rules

The TSD describes additional rule revisions that we recommend that ADEQ make the next time ADEQ modifies the rules.

G. Do the rules meet the evaluation criteria under section 110(l) and 193 of the Clean Air Act?

Section 110(l) states: “Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.”

With respect to the procedural requirements of CAA section 110(l), based on our review of the public process documentation included in ADEQ’s April 2017 NSR submittal, we find that ADEQ has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to the EPA. With respect to the substantive requirements of section 110(l), we have determined that our approval of the 2017 NSR submittal corrects numerous deficiencies in ADEQ’s program and does not relax any existing requirements in the Arizona SIP.

For the reasons set forth above, we can approve the ADEQ SIP revision as proposed in this action under section 110(l) of the Act.

Section 193 of the Act, which was added by the Clean Air Act Amendments of 1990, includes a savings clause that provides, in pertinent part: “No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.” We find that the provisions included in ADEQ’s 2017 NSR submittal would ensure equivalent or greater emission reductions as compared to the current SIP-approved NSR program in the nonattainment areas under ADEQ’s jurisdiction. In addition, this action does not modify any pre-1990 requirements. Although we are proposing to

remove two pre-1990 rules from the SIP – R9-3-301(I) and (K) – *Installation Permits: General* and R9-3-304(H) – *Installation Permits in Attainment Areas* -- we are also proposing to approve newer, updated requirements into the SIP that are at least as stringent.

For the reasons set forth above, we can approve the submitted NSR program under section 193 of the Act.

#### H. Conclusion

For the reasons stated above, and as explained further in our TSD, we find that the rules in ADEQ's April 2017 NSR submittal satisfy the applicable CAA and regulatory requirements for PSD, and nonattainment NSR permit programs under CAA section 110(a)(2)(C) and parts C and D of title I of the Act, with the exception of one NA-NSR requirement relating to PM<sub>2.5</sub> precursors that has already been identified as a disapproval issue in a previous action and which ADEQ intends to address in a later SIP submittal. The submitted NSR rules also adequately address certain deficiencies we identified in our 2015 NSR action concerning specific requirements in 40 CFR 51.161 and 51.164 that were evaluated as part of this action. Our proposed approval is also consistent with section 110(l) and 193 of the Act. Accordingly, we are proposing to approve all the rules in ADEQ's April 2017 NSR submittal into the Arizona SIP. In addition, we are also proposing to remove the existing SIP-approved rules listed in Table 2 from the SIP, as these rules are outdated and mostly being superseded by our proposed action.

### III. **Public Comment and Proposed Action**

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules into the Arizona SIP because we believe they fulfill all relevant requirements. Specifically, we are proposing approval of the new and amended ADEQ regulations listed in Table 1, above, as a revision to the ADEQ portion of the Arizona SIP. We are also proposing to

remove from the Arizona SIP the existing rules listed in Table 2, as these rules are outdated and mostly being superseded by our proposed action.

We will accept comments from the public on this proposal until [**insert date 30 days after date of publication in the Federal Register**]. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

#### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the ADEQ rule listed in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 16, 2017.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

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